

Message Text

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DRAFTED BY L:SMSCHWEBEL/L:MFELDMAN:CDJ

APPROVED BY D::CTIN; SECRETARY

T:CMAW

ARA:WROGERS (SUBS)

IO:WBUFFUM

EB:JKATZ

IO/CMD:JMCDONALD (SUBS)

EB/OT/GCP:DDUNFORD (SUBS)

TREASURY:MBRADFIELD (SUBS)

S/S: WHLUERS

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO IMMEDIATE

USDEL VLADIVOSTOK IMMEDIATE

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EXDIS, TOSEC 327

E.O. 11652: GDS

TAGS: UNCTAD, EGEN

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

REFS: (A) SECTO 88 (B) TOSEC 210 (C) SECTO 95

(D) SECTO 99

TO THE SEC FROM INGERSOLL, MAW, ROGERS, BUFFUM, KATZ,
ALDRICH AND SCHWEBEL

1. IN RESPONSE TO QUESTION OF PARA 1 REFTEL (A), WE ARE
CONVINCED THAT A CERDS WHICH IS ADOPTED WITHOUT A NEGATIVE
VOTE ON THE WHOLE OF IT WILL BE PORTRAYED, WITH INCREASED
EFFECT AS TIME PASSES AND SUBSEQUENT UN RESOLUTIONS
REITERATE IT, AS AN AUTHORITATIVE STATEMENT OF THE
INT'L LEGAL PRINCIPLES GOVERNING INT'L ECONOMIC RELATIONS.
AS REFTEL (B), IN PARAS D, E AND F, SUGGESTS, HISTORY
OF UN RESOLUTIONS AND THEIR TREATMENT IN INT'L COURT
OF JUSTICE SO INDICATES. MOREOVER, CURRENT G-77 DRAFT
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OF CERDS CONTAINS LANGUAGE INDICATING THAT IT IS AN

INSTRUMENT OF INT'L LAW. EVEN WITHOUT THIS LANGUAGE, UNIVERSAL APPROVAL OF OR ACQUIESCENCE IN CHARTER AS A WHOLE WILL ENHANCE CLAIMS OF THE INT'L LEGAL FORCE OF THE PRINCIPLES IT CONTAINS.

2. WE BELIEVE THAT IMPORTANT DECISION-MAKERS, PUBLIC AND PRIVATE, WILL PAY ATTENTION TO THE PRINCIPLES CONTAINED IN THE DECLARATION, AT ANY RATE IF THEY ARE ADOPTED WITH UNIVERSAL APPROVAL OR ACQUIESCENCE. THE DEVELOPING

COUNTRIES, WITH THE INCREASING ECONOMIC POWER OF SOME OF THEM, CLEARLY ATTACH GREAT IMPORTANCE TO THESE PRINCIPLES OR THEY WOULD NOT PRESS SO HARD FOR THEIR AFFIRMATION. IF THE USG FAILS TO VOTE AGAINST A CHARTER CONTAINING SUBSTANTIVE PROVISIONS THAT PROFOUNDLY CONFLICT WITH ITS POLICIES ON TREATMENT OF FOREIGN INVESTMENT, PRODUCERS' CARTELS AND OTHER ASPECTS OF TRADE POLICY, ETC., IT WILL BE USED AS AN INSTRUMENT TO UNDERMINE OUR POSITIONS IN NEGOTIATIONS AND CONFRONTATIONS ACROSS THE BOARD. IT WILL BE INVOKED AGAINST EXTENSION OF USG DIPLOMATIC PROTECTION OF FOREIGN INVESTMENT AND AGAINST JUST STANDARDS OF COMPENSATION FOR EXPROPRIATED INVESTMENT. US INVESTORS AND TRADERS MAY AS A RESULT OF THE CHARTER -- TO WHICH THE G-77 WILL GIVE GREAT PLAY, PARTICULARLY IF ADOPTED WITHOUT A DISSENTING VOTE -- FEEL INCREASINGLY VULNERABLE IN DEALINGS WITH DEVELOPING COUNTRIES.

3. WHILE TO SAY THAT WE WOULD BREAK FAITH WITH THE EUROPEANS IF WE FAILED TO VOTE AGAINST THE CHARTER AS A WHOLE WOULD GO TOO FAR, WE HAVE INFORMED THEM (AND MEXICO) THAT THE USG WILL VOTE AGAINST AN UNACCEPTABLE CHARTER WITHOUT MAKING THEIR NEGATIVE VOTES A CONDITION OF OUR SO VOTING. MORE THAN THIS, IF WE NOW SHIFT POSITION, AFTER WHAT WE HAVE TOLD THE MEXICANS AND ALL THE UN KNOWS, IT WILL DEMONSTRATE TO THE GROUP OF 77 AND NON-ALIGNED THAT IN THE END THEY CAN OVERRIDE THE USG ON THE PRINCIPAL ECONOMIC ISSUES OF THE ERA, HOWEVER FIRMLY WE INITIALLY ESPOUSE OUR VIEWS. THEY DID PRECISELY THIS AT THE SIXTH SPECIAL SESSION LAST SPRING.

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FAILURE TO VOTE NOW NEGATIVELY ON CHARTER AS A WHOLE WOULD PLAY INTO THE HANDS OF THOSE RADICAL LEADERS WHO DOMINATE G-77 AND WHO REFUSE TO COMPROMISE IN BELIEF USG CAN BE BROUGHT TO TERMS. IT WILL UNDERMINE OUR OTHERWISE INCREASINGLY SUCCESSFUL EFFORTS TO GAIN THE SOLIDARITY OF OUR ALLIES IN CONTAINING THE PERNICIOUS RESULTS OF THE SIXTH SPECIAL SESSION, AND IT WOULD GIVE FURTHER CREDENCE AND IMPETUS TO THOSE RESULTS. WE SHALL

BE ACQUIESCING IN A CHARTER FORMULATED IN EXTREME TERMS MUCH WORSE THAN THOSE RABASA HAS DISCUSSED WITH YOU, AND CONFLICTING WITH USG POSITIONS ON MULTIPLE ISSUES. FAILURE TO MAINTAIN OUR POSITION AGAINST IT WILL WEAKEN OUR CREDIBILITY AND BARGAINING POSITION IN FUTURE NEGOTIATIONS WITH G-77. IF WE SEEM TO KNUCKLE UNDER HERE, G-77 WILL ASSUME WE SHALL KNUCKLE UNDER IN FUTURE. MOREOVER, US IS COUNTRY WITH GREATEST OVERSEAS INVESTMENTS AND LARGEST MARKET ECONOMY; IF WE DO NOT STAND UP FOR INVESTOR AND MARKET TRADING RIGHTS, NO ONE ELSE WILL.

4. THE BASIC CONSIDERATION IS THIS: G-77 IS ENGAGED IN AN INTENSE EFFORT FUNDAMENTALLY TO RESTRUCTURE INTERNATIONAL ECONOMIC RELATIONS TO THEIR DISPROPORTIONATE BENEFIT AND AT WEST'S EXPENSE. THE MOST IMPORTANT DOCUMENTAL INSTRUMENT IN THIS G-77 EFFORT IS THE CHARTER. IN OUR SUBMISSION, WE WILL SERVE OUR NATIONAL INTEREST BADLY IF WE APPEAR TO ACQUIESCE IN ITS PRINCIPLES, WHICH WILL BE HURLED AGAINST US ON COUNTLESS FUTURE OCCASIONS. HOWEVER, IF WE NOW VOTE AGAINST CERDS AS A WHOLE, WE WILL BE SHOWING THAT THERE ARE LIMITS BEYOND WHICH WE CANNOT BE PUSHED, RHETORICALLY AND ACTUALLY.

5. IT IS SPECIALLY IMPORTANT THAT OUR VOTING POSITION ON CHARTER BE VIEWED IN THE CONTEXT OF AN ASSEMBLY WHICH HAS BEHAVED WITH GRAVE IRRESPONSIBILITY. IF WE FAIL TO VOTE AGAINST CHARTER, WE SHALL BE SAYING TO THE GROUP OF 77 THAT THEIR STEAMROLLER IS WORKING. WE SHALL BE SAYING TO THE STATES THAT HAVE LED THE ILLEGAL SUSPENSION OF SOUTH AFRICA AND THE IMPROPER RECEPTION OF THE PLO THAT THEY CAN OVERRIDE OUR DECLARED AND FUNDAMENTAL OBJECTIONS IN THIS SPHERE AND DO SO IN A CONFIDENTIAL

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WAY WHICH GIVES THEIR CHARTER AN APPEARANCE OF SUPPORT IT ACTUALLY LACKS. YOU HAVE SOUGHT TO IMPRESS ON THE NON-ALIGNED THAT THEY MUST ENGAGE IN A PROCESS OF NEGOTIATION RATHER THAN IMPOSITION BUT IN FACT THE CHARTER THEY NOW SEEM ABOUT TO PUT TO A VOTE WOULD BE A REFLECTION OF THEIR IMPOSED WILL.

6. IT MAY BE ADDED THAT USG POSITION OF VOTING AGAINST CHARTER AS A WHOLE IS ONE THAT HAS APPROVAL THROUGHOUT EXECUTIVE BRANCH, AND THAT SENATOR PERCY STRONGLY SUPPORTS IT. AS YOU KNOW, SENATOR PERCY IS HANDLING CERDS IN UNGA SECOND COMMITTEE.

7. IT IS PROBABLE THAT A VOTE ON CERDS WILL NOT TAKE PLACE FOR A WEEK OR TWO IN UNGA SECOND COMMITTEE. IN

ACCORDANCE WITH YOUR INSTRUCTIONS, WE SHALL SEEK FINAL VOTING INSTRUCTIONS FROM YOU BEFORE VOTE IF WE ARE THE ONLY MAJOR COUNTRY THAT WILL BE VOTING AGAINST CERDS AS A WHOLE. WE UNDERSTAND WE ARE AUTHORIZED TO VOTE AGAINST AS A WHOLE IF WE ARE NOT THE ONLY SUCH MAJOR COUNTRY, AND THAT WE ARE IN ANY EVENT AUTHORIZED TO VOTE NO ON OBJECTIONABLE ARTICLES.

8. WE ARE CONSULTING FULLY WITH EUROPEANS AND JAPAN IN THE HOPE OF PROMOTING A COMMON POSITION OF VOTING AGAINST CHARTER AS A WHOLE.

9. AS NOTED REFTTEL (B), OUR CURRENT BEST ESTIMATE IS THAT FRG AND PROBABLY JAPAN WOULD JOIN US IN A NEGATIVE VOTE ON WHOLE. UK, ITALY, AND DENMARK HAVE AT TIMES INDICATED DISPOSITION TO VOTE NEGATIVELY ON WHOLE AND OTHER TIMES TO ABSTAIN; LATEST REPORT FROM EC COMMISSION OFFICIALS SUGGESTS THEY AND OTHER EC MEMBERS MAY VOTE UNANIMOUSLY AGAINST CHARTER AS A WHOLE. HOWEVER, AMEMB PARIS IS CONVINCED FRANCE WILL ABSTAIN. IF SO, THAT COULD INFLUENCE OTHER EC WAVERERS TO ABSTAIN. FRG IS TRYING TO PERSUADE GOF TO JOIN IN A NEGATIVE VOTE. CANADA PROBABLY AND AUSTRALIA ALMOST CERTAINLY WILL ABSTAIN. NEW ZEALAND, IRELAND AND A FEW OTHER OECD MEMBERS WILL VOTE FOR CHARTER, AS WILL OF COURSE VAST MAJORITY OF UN MEMBERSHIP.
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10. ACTING SECRETARY PLANS NEXT WEEK TO TELEPHONE AMBASSADORS IN WASHINGTON OF FRG, UK, ITALY, JAPAN, DENMARK AND CANADA TO REQUEST THAT THEY JOIN USG IN VOTING AGAINST CHARTER, PROVIDED YOU APPROVE. INGERSOLL

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